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June 26, 2019

VIA EMAIL

James M. Peck, Esquire
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Erica Richards, Esquire
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Morrison & Foerster LLP
250 West 55th Street
New York, NY 10019-9601

Re: *Blue Dog at 399 Inc. v. Seyfarth Shaw, LLP and Berman*
Adv. Pro. No. 19-1029-mew (Bankr. S.D.N.Y.)

Dear Mr. Peck and Ms. Richards:

As you recall, by Order dated May 22, 2019, the Court granted Defendants' Motion to Dismiss and gave Plaintiff leave to file an Amended Adversary Complaint within twenty days.

Plaintiff timely filed its Amended Adversary Complaint on June 9, 2019. Plaintiff served the Amended Adversary Complaint that same day, through both ecf electronic service (*see* Fed. R. Civ. P. 5(b)(2)(E)) and by email directed to each of you.

Pursuant to Rule 15(a)(3) and Bankr. R. 7015, your clients' answer to the Amended Adversary Complaint was due within fourteen days after filing and service. *See* Fed. R. Civ. P. 15(a)(3) ("*Time to Respond*). Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or *within 14 days after service of the amended pleading, whichever is later* [*italics added*]"). Because the fourteenth day after service of the Amended Adversary Complaint was a Sunday, your clients' deadline to file their answer was extended to Monday, June 24, 2019. Fed. R. Civ. P. 6(a)(1)(C).

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Your clients did not file an answer to the Amended Adversary Complaint on or before Monday, June 24, 2019 and have not done so since, nor have you requested any extension of the deadline to do so. As such, your clients are currently in Default. Nonetheless, as a courtesy to you we will withhold filing our Notice of Default through the close of business on Friday, June 28, 2019 to give your client additional time to answer the Amended Adversary Complaint.

This letter will also acknowledge receipt of Ms. Richards' voicemail message late yesterday afternoon. Although she asserted that your clients' deadline to respond has not yet commenced because we did not file a new summons, no new summons is required under the federal rules where no new defendants are added and there is merely the filing and service of an amended complaint against defendants who have already been served. *See, e.g., Novotny v. Barnes (In re Barnes)*, Adv. Case No. 14-ap-03017 (Bankr. N.D. Ohio Nov. 5, 2014)(granting motion for default judgment)("Plaintiffs filed their Amended Complaint on May 21, 2014, which they served on Defendant [N.B.: *without a new summons*] by first class United States mail on that date. Defendant was required to file an answer or other response to the Amended Complaint by June 4, 2014. *See* Fed. R. Civ. P. 15(a)(3), Fed. R. Bankr. P. 7015."); *Gerber v. Citigroup, Inc.*, No. CIV S-07-0785 (E.D. Cal. Feb. 29, 2008)("As long as the original pleading was served in accordance with Fed.R.Civ.P. 4 (*i.e.*, by personal service or other acceptable means), the amended pleading may be served by mail on the party's attorney, or otherwise in conformity with Fed.R.Civ.P. 5. ***It need not be accompanied by an additional summons*** [bold italics added]."). As such, your clients' deadline commenced, and lapsed, as described above.

We will docket this letter to provide record notice of the foregoing voluntary extension of your filing deadline (apart from which we reserve all other rights).

Please call with any questions.

Very truly yours,
/SMH
Scott Michael Hare

/SMH

cc: Hon. Michael E. Wiles (*by electronic case filing*)